IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 7373 of 2001 (M/S)
(Old CMWP No. 15204 of 1988)

State of U.P. through the Collector Nainital.

…… Petitioner.

Versus

1. Sri Hazara Singh S/O Laxman Singh.
2. The Commissioner, Kumaun Division, Nainital.
3. Smt. Harbinder Kaur, W/O Harbhajan Singh.
4. Sri Param Singh S/O Niranjan Singh,
5. Sri Dalbinder Singh S/O Niranjan Singh,
6. Sri Sukhdeo Singh S/O Singhara Singh,
7. Sri Kashmira Singh S/O Gopal Singh,
8. Sri Bhagwant Singh S/O Singhara Singh,
9. Sri Prem Singh S/O Singhara Singh.
10. Sri Jagjeet Singh S/O Niranjan Singh, All residents of village Bharatpur, Tashil Kashipur, District Nainital.

… Respondents.

Sri Gopal Narain Srivastava, learned Brief Holder for the State-petitioner.
None is present for the respondents despite sufficient service.

Dated April 30, 2007.

Hon'ble B.S. Verma, J.

By means of the present writ petition, the petitioner has prayed for issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 18-1-1988 passed by the respondent no.2 (Annexure No. IV to the writ petition), whereby the Commissioner Kumaun Division has allowed the Ceiling Appeal No. 10 of 1985-86 Singhara Singh Vs. State of U.P. and 10 others thereby the order dated 14-2-1986 passed by the Prescribed Authority Kashipur was set aside and the notice under Section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act 1960 (***for short the Act***) was discharged.

Brief facts, giving rise to the present writ petition, are that the respondent no.1, the recorded tenure holder, was issued a

notice under Section 10(2) of the said Act. The respondent no.1 filed objection before the Prescribed Authority on 16.12.1975 and alleged that different plots were given on Patta to respondent nos. 3 to 11. The Prescribed Authority after perusing the material before it declared land measuring 41-95 acres held by respondent no.1 as surplus land vide order dated 30-10-1976. Aggrieved, appeal was preferred before the District Judge, which was dismissed vide order dated 14-7-1977. The respondent no.1 preferred Writ Petition No. 1932 of 1977 before the Allahabad High Court, which was ultimately allowed vide order dated 10-3-1983. The matter was remanded to the appellate authority to consider the case of the respondent no.1 as well as respondent nos. 3 to 11. The appellate court, without deciding the appeal on merit, remanded the case to the Prescribed Authority to decide the case in the light of the observations made in the judgment of the High Court.

In the mean time, declaratory suit between the parties under Section 229B of the U.P. Zamindari Abolition and Land Reforms Act was remanded by the High Court for decision afresh, therefore, according to the petitioner, the decision of the High Court in Writ Petition 1932 of 1977 has become non est. The petitioner has not filed copy of the order passed by the High Court in the aforesaid matter under Section 229B of the Zamindari Abolition and Land Reforms Act. The Prescribed Authority again heard the ceiling case and after hearing both the parties it came to the conclusion that there is no force in the objections raised by the tenure holder and the objectors and declared irrigated land measuring 20.31 acres as surplus vacant land vide judgment and order dated 14-2-1986. The Prescribed Authority was of the view that the tenure holder has executed the *Pattas* just to avoid the ceiling proceedings.

Aggrieved by the said order, the tenure holder Singhara Singh filed Ceiling Appeal No. 10 of 1985-86 before the Commissioner, who after examining the evidence on record came

to the conclusion that the notice issued under Section 10(2) of the Act is liable to be set aside. Accordingly, the appeal was allowed vide order dated 18-1-1988.

The main ground on which the judgment and order passed by the Commissioner has been challenged is that the disputed land was recorded in the name of the respondent no. 1 as on 8-6-1973 and the transfer made by the respondent no. 1 by way of Patta Dawami was not a valid transaction for the ceiling purposes.

I have heard learned counsel for the State and perused the entire material on record including the earlier judgment and order dated 10-3-1983 passed by the Allahabad High Court.

It may be mentioned that the Allahabad High Court in the order dated 10-3-1983 passed in Writ Petition No. 1902 of 1977 and others has made the following observations while remanding the matter to the appellate authority:-

"The appellate authority further failed to consider the bona fide of the sub-letting made by the tenure-holders in favour of Amarjeet Singh and others. As discussed earlier, the sub-letting had been done in 1968 and sub-tenants acquired Adhivasi and Sirdari rights in 1970. If that be so, it is difficult to hold that the transaction was not bonafide. However, I refrain from expressing any final opinion on the question as the appellate authority should now consider the question having regard to the legal position and further in the light of the oral and documentary evidence which has been produced by the petitioner. The petitioners have produced 25 witnesses, in addition to that they have filed a number of documents but the lower appellate court failed to discuss or analyse the evidence. While considering the bona fides of the sub-letting the appellate authority will consider and analyse the entire evidence produced by the parties."

From a perusal of the judgment and order under challenge passed by the respondent no.2 it is obvious that the appellate court has dealt with all the controversies involved in the appeal and it has been observed that the tenure holder had executed Pattas in favour of different persons, who are respondent no. 3 to 11 in appeal, on 10-3-1968, 11-3-68, 15-4-68, 15-3-1968 and 12-5-68. The appellate court has found that the original tenure holder Singhara Singh and co-tenure holders Hazara Singh and Smt. Gurdeep Kaur had made transactions of their land holding measuring 157 acres in the year 1968 and the objectors were having separate holdings thereon since 1968. It has also been held that the original tenure holder was having his land holding to the tune of 22.05 acres. After considering the evidence, the appellate court found that the land transferred by way of Patta by the original tenure holder prior to 24th January 1971 cannot be included in his holdings under Section 5 of the Ceiling Act. Accordingly, the appeal was allowed.

It has been urged by the learned counsel for the State that the suit under Section 229-B of the Z.A. and L.R. Act had not become final and the tenure holders Singhara Singh and other co-tenure holders have not been declared Sirdar of the land which had been given to them in exchange by the State Government, therefore, the original tenure holder Singhara Singh could not have legally parted with his holdings. The contention of the learned counsel is not tenable. The impugned order is not based on that ground, rather the learned appellate court has found that the alleged sub-letting was made by the tenure holder as per Section 39 of the Act and since the *Pattas* were executed prior to 24-1-1971, therefore, the land transferred by way of those Pattas could not have been included in the holdings of the tenure holders for the purposes of ceiling. Learned counsel for the State has fairly conceded that the proceedings under the Ceiling Act are independent in nature and the Prescribed Authority and the

appellate court have no examine as to who is the tenure holder of the holdings.

It may be mentioned that in exercise of writ jurisdiction this Court cannot sit like a court of appeal and cannot re-appreciate the evidence. Only perversity of the impugned judgment can be seen by this Court.

Having considered the submissions made by the learned Brief Holder for the State vis-à-vis the impugned judgment and order passed by the Commissioner Kumaun Division, I that the order has been passed by the respondent no.2 after proper appraisal of the evidence led by the parties in the Ceiling Case as directed by the High Court, and the appellate court has made reference to all the relevant evidence in its order. In my view, the learned Commissioner, after analyzing the entire evidence led by the parties, has rightly set aside the order passed by the Prescribed Authority and has not committed any manifest error of law in allowing the appeal.

In view of above, there is no merit in this writ petition, which is liable to be dismissed outright.

The writ petition is hereby dismissed with no order as to costs.

All applications stands disposed of accordingly.

(B.S. Verma, J.)

RCP